

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

FORREST KENDRID,

Plaintiff,

v.

YAHYA, et al.,

Defendants.

No. 2:23-cv-1145 CSK P

ORDER AND FINDINGS AND
RECOMMENDATIONS

Plaintiff is a civil detainee, proceeding without counsel, with this civil rights action pursuant to 42 U.S.C. § 1983. For the reasons stated herein, this Court recommends that this action be dismissed for plaintiff's failure to prosecute.

On May 6, 2024, this Court granted defendants' motion to extend the discovery deadline to July 16, 2024 and the dispositive motion deadline to October 22, 2024. (ECF No. 34.) On July 5, 2024, defendants filed a motion to extend the discovery deadline to September 13, 2024 and the dispositive motion deadline to December 21, 2024. (ECF No. 35) In the motion for extension of time filed July 5, 2024, defendants state that from approximately January 2024 until June 10, 2024, plaintiff was incarcerated at the California Medical Facility ("CMF"). (*Id.* at 4.) While plaintiff was incarcerated at CMF, defendants were unable to take plaintiff's deposition because plaintiff was in a mental health crisis bed. (*Id.* at 4-5.) On June 10, 2024, the CMF Litigation Coordinator informed defense counsel that plaintiff had been released from prison. (*Id.*

1 at 5.) On June 25, 2024, after defense counsel determined a new address where plaintiff could
2 receive documents, defense counsel served plaintiff with an Amended Notice of Taking
3 Deposition of Plaintiff. (Id.) The deposition was set to take place on July 9, 2024 at the Apus
4 Court Reporting Office in Los Angeles, California. (Id.) On July 1, 2024, plaintiff called defense
5 counsel to inform them that he received the deposition notice for July 9, 2024, but that plaintiff
6 could not attend the deposition due to the unpredictability of plaintiff's housing situation. (Id.)
7 Plaintiff reported that he was unable to stay at his original housing due to needing a "higher level
8 of care," and that he was currently at Martin Luther King Junior Community Hospital, awaiting
9 direction on permanent housing, possibly at a skilled nursing facility. (Id.) A case worker was
10 present during the call and could not provide a predictable timeline for plaintiff's new housing but
11 said it could take until August 2024. (Id.) For these reasons, on July 5, 2024, defendants filed the
12 motion to extend the discovery deadline to September 13, 2024 and the dispositive motion
13 deadline to December 21, 2024. (Id. at 2-3.) Defendants state that they are at an impasse and
14 cannot make significant progress with their defense until they take plaintiff's deposition. (Id. at
15 2.)

16 On July 17, 2024, this Court granted plaintiff thirty days to show cause why this action
17 should not be dismissed for his failure to prosecute. (ECF No. 36.) This Court observed that
18 court records reflected that plaintiff did not inform the Court of his new address following his
19 release from prison on or around June 10, 2024. (Id. at 3.) In this order, this Court also advised
20 plaintiff that if he refused to be deposed or otherwise failed to participate in discovery, this Court
21 may recommend dismissal of this action. (Id.) In this order, this Court also stated that the Court
22 would address defendants' motion for extension of time filed July 5, 2024 following plaintiff's
23 response to the order to show cause. (Id.) On July 29, 2024, the July 17, 2024 order to show
24 cause served on plaintiff was returned by the United States Postal Service. It has now been sixty
25 days since the Court issued its order to show cause to plaintiff, and defendants' proposed
26 extension of the discovery deadline has also now passed.

27 The Local Rules, corresponding with Federal Rule of Civil Procedure 11, provide,
28 "[f]ailure of counsel or of a party to comply with . . . any order of the Court may be grounds for

1 the imposition by the Court of any and all sanctions ... within the inherent power of the Court.”
2 Local Rule 110. “District courts have inherent power to control their dockets” and, in exercising
3 that power, may impose sanctions, including dismissal of an action. Thompson v. Housing Auth.,
4 City of Los Angeles, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on
5 a party’s failure to prosecute an action, obey a court order, or comply with local rules. See, e.g.,
6 Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply with
7 a court order to amend a complaint); Malone v. U.S. Postal Service, 833 F.2d 128, 130-31 (9th
8 Cir. 1987) (dismissal for failure to comply with a court order); Henderson v. Duncan, 779 F.2d
9 1421, 1424 (9th Cir. 1986) (dismissal for failure to prosecute and to comply with local rules).
10 In determining whether to dismiss an action, the Court must consider several factors: (1) the
11 public’s interest in expeditious resolution of litigation; (2) the Court’s need to manage its docket;
12 (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on
13 their merits; and (5) the availability of less drastic sanctions. Carey v. King, 856 F.2d 1439, 1440
14 (9th Cir. 1988).

15 Here, plaintiff failed to file a notice of change of address. The Court cannot effectively
16 manage its docket if plaintiff ceases litigating his case. In addition, this district court in particular
17 has a strong need and interest in managing its docket given the extremely high caseload in the
18 Eastern District of California. Thus, this Court finds that the first and second factors—the
19 public’s interest in expeditious resolution of litigation and the Court’s need to manage its
20 docket—weigh in favor of dismissal. The third factor—prejudice to defendants—weighs in favor
21 of dismissal. Plaintiff’s failure to prosecute this action prejudices defendants by delaying the
22 resolution of this action. The fourth factor—availability of less drastic sanctions—favors
23 dismissal. Mail sent to plaintiff was returned unserved. Plaintiff has not filed a notice of change
24 of address since his release from prison on or around June 10, 2024. Because plaintiff has
25 apparently abandoned this action, less drastic sanctions are not warranted. The fifth factor—
26 public policy favoring a disposition of actions on its merits—arguably weighs against dismissal.

27 Despite the public policy favoring disposition on the merits, this Court finds that the first,
28 second, third and fourth factors discussed above weigh in favor of dismissal. Accordingly, this

1 Court recommends dismissal of this action based on plaintiff's failure to prosecute.

2 Accordingly, IT IS HEREBY ORDERED that:

3 1. Defendants' motion for extension of time to extend the discovery and dispositive
4 motion deadlines (ECF No. 35) is vacated;

5 2. The Clerk of the Court is directed to assign a district judge to this action; and

6 IT IS HEREBY RECOMMENDED that this action be dismissed for failure to prosecute.

7 These findings and recommendations are submitted to the United States District Judge
8 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
9 after being served with these findings and recommendations, any party may file written
10 objections with the court and serve a copy on all parties. Such a document should be captioned
11 "Objections to Magistrate Judge's Findings and Recommendations." Any response to the
12 objections shall be filed and served within fourteen days after service of the objections. The
13 parties are advised that failure to file objections within the specified time may waive the right to
14 appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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16 Dated: September 17, 2024

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18 CHI SOO KIM
19 UNITED STATES MAGISTRATE JUDGE
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